

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,)	
)	NO. CR-08-2017-FVS
)	
Plaintiff,)	
)	ORDER ADOPTING REPORT
v.)	AND RECOMMENDATION
)	REGARDING RESTITUTION
DAVID C. LENIHAN)	ISSUES
)	
)	
Defendant.)	

BEFORE THE COURT for resolution is the Report and Recommendation entered on May 11, 2009 (Ct. Rec. 94), recommending that (1) the Amended Judgment to be entered by the Court make a specific allocation of the restitution due to Underwood Fruit and to the insurers and (2) the Amended Judgment set forth an appropriate payment plan for the Defendant to meet after being released from prison.

On May 21, 2009, Underwood Fruit timely filed an objection to the Magistrate Judge's Report and Recommendation. (Ct. Rec. 95). Underwood Fruit objected to the Magistrate Judge's determination that he did not have jurisdiction to revise the District Court's order that only a "net" sum remaining after deductions for taxes and attorneys' fees should be paid to Underwood Fruit from Defendant's retirement account. *Id.* In its objections, Underwood Fruit points out that the District Court did not articulate whether all attorneys' fees incurred in Defendant's numerous legal matters should be paid first or just those fees incurred by defense counsel in the instant case.

RULING

It is the Court's finding that only the federal income taxes due as a result of the Defendant's early withdrawal of his retirement account and only those attorneys' fees incurred in this case should be deducted from the Defendant's retirement account upon liquidation and before payment to Underwood Fruit of the balance of the retirement account toward the restitution amount determined (Ct Rec. 75). Having reviewed the Report and Recommendation, the Court adopts the balance of the Magistrate Judge's Report and Recommendation (Ct. Rec. 94) in its entirety.

IT IS HEREBY ORDERED that the Report and Recommendation (**Ct. Rec. 94**) is **ADOPTED as set forth herein** and that an Amended Judgment shall be entered in conformity herewith.

IT IS SO ORDERED. The District Court Executive is directed to enter this Order and forward copies to counsel.

DATED this 18th day of June, 2009.

S/Fred Van Sickle
FRED VAN SICKLE
SENIOR UNITED STATES DISTRICT JUDGE